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Current Topics.

American Law.

IT is always a pleasure, more particularly so in these days of closer Anglo-American relations, to receive and read a batch of American law reviews. As we have previously had occasion to observe, literature such as this may well be classed as an essential import, for it helps lawyers to appreciate the fact that the common origins of our legal systems afford one of the surest guarantees of happy relations in the future between our two countries. In the *North Carolina Law Review* for December, 1942, the fourth edition of Gray's "The Rule Against Perpetuities" is reviewed, and it is pointed out that that work has been accepted for nearly sixty years as authoritative not only in the United States but in all parts of the English-speaking world. During the twenty-seven years from 1915 to 1942 over 1,300 new cases involving the rule have been reported. It is good to know that the development of this salutary rule of English law is considered of such importance in the United States. The *Oregon Law Review* for the same month contains an interesting article on the liability of innkeepers for their guests' property, and among the authorities quoted are "Story's Bailments" and the *Times Law Reports.* The *Massachusetts Law Quarterly* for January, 1943, contains the eighteenth report to the Governor of Massachusetts of the Judicial Council, which was formed in 1924 for the study of the judicial system of the Commonwealth. The report notes that the maxim *inter arma silent leges* is not true in modern democratic governments, even in the present total war in England, and certainly not in the United States. The report quotes a statement by LORD DENMAN in 1851 in support of the Bill to remove the rule that parties to a lawsuit were not allowed to testify because it was supposed that no interested person could be expected to tell the truth—a view which he described as false as it was insulting. He said that some professional men, including judges, objected to all changes in the law because "that which they find, they believe to have been established on full deliberation by the wisdom of former ages . . . whereas in truth some of the existing rules are the neglected growth of time and accident." Most lawyers on both sides of the Atlantic have grown to greater wisdom since that date. One example taken from the report illustrates the realistic attitude of American lawyers and judges. This is a proposed amendment to a statute already in existence to protect defendants against "multiple" or "chain" libel suits, so as to enable defendants to prove in mitigation of damages that the plaintiff has already recovered or has brought action for or has received or has agreed to receive compensation in respect of substantially the same libel as that for which the action was brought. In this country the same phenomenon is known to lawyers and newspaper proprietors, and as long ago as 1888 the Law of Libel Amendment Act was passed, enacting in s. 6 that in the case of a newspaper libel a defendant may prove in mitigation of damages that the plaintiff has already recovered or brought actions for damages or has received or agreed to receive compensation in respect of a libel or libels to the same purport as the libel for which the action is brought. The American proposal seeks to extend this generally to "chain" actions for defamation, whether in newspapers or any other publications.

War Damage Amendment.

A NUMBER of interesting queries with regard to war damage law were raised in the House of Lords on the motion for the second reading of the War Damage (Amendment) Bill on 9th March. LORD BARNBY said that under the belief that a value payment would be made instead of a cost of works payment, leaseholders had disclaimed leases. It was not clear from the Bill whether, when a cost of works payment was substituted for a value payment, the leaseholder would be entirely dispossessed. LORD BARNBY further pointed out that the third instalment of contribution due on 1st July this year would bring the total contribution up to approximately £120,000,000. The payments already made totalled £86,000,000, and it was believed that liabilities accumulated since then would not be in the neighbourhood of the additional £40,000,000. He therefore asked for some relief for property owners. VISCOUNT HAILSHAM called attention to "a very serious defect" in the War Damage Act, which had not been corrected, but in fact had been aggravated by the Bill. Both the tenant and the landlord under a ground lease had to pay war damage contribution. If the tenant disclaimed and the landlord did not serve a counter-notice the landlord acquired the property freed from the leasehold interest. Under the Act and under the Bill, if it became law, if the Commission decided that the property was worth repairing, they paid the cost of repairs and the tenant lost the value of his lease to the landlord. VISCOUNT HAILSHAM gave the facts of a case which he said gave him a personal interest in the matter. LORD MARLEY referred to the fact that contributions were based on the Sched. A value of the property on 1st September, 1939, and there was no means of modifying the contribution despite the fact that the Sched. A value might subsequently have varied very considerably up or down. The Lord Chancellor replied that the second point made by LORD BARNBY and that made by LORD MARLEY would certainly be considered, but did not come within the scope of the present Bill. With regard to LORD BARNBY'S first point his lordship said that it was impossible to say that there would not be any marginal cases where there would possibly be a change as between value payments and cost of works payments. With regard to LORD HAILSHAM'S query, the Lord Chancellor thought that it would not be very prudent advice for a surveyor to advise a lessee to surrender a valuable lease unless he were certain that it had become a *damnosa hereditas.* The change made by the Bill with regard to the basic date as at which values and costs were to be taken was a change which could not be avoided and was really necessary in order that the machine might work in a practical manner. The Bill was read a second time and committed to a committee of the whole House. The points raised in the Lords can be answered quite shortly. First, any prospective relief for property owners must depend not only on cost of works payments which have been or are to be made, but also on the very heavy value payments which will fall to be made after the war. It is believed that these will bring the ultimate aggregate of payments far above £120,000,000. With regard to disclaimer it deserves to be better known that a conditional notice of retention can be made under s. 2 of the Landlord and Tenant (War Damage) (Amendment) Act, 1941, which operates as a notice of disclaimer only when the Commission decides to make a value payment. With regard to LORD MARLEY'S point about a post-1939 reduction in a Sched. A value, a limited measure of relief in some such cases is given in the amendment to s. 30 (2) of the principal Act effected by the War Damage (Amendment) Act, 1942, First Schedule, para. 13. It will be interesting to know why this relief should not be extended to a wider range of such cases.

Evidence and Powers of Attorney Bill.

ON the motion for the second reading of the Evidence and Powers of Attorney Bill in the House of Lords on 9th March, the Lord Chancellor explained that the Act of 1940 enabled power to be conferred to administer oaths and take affidavits on officers of the three services, and also on the diplomatic and consular officers of the protecting power, which at that time was the United States of America. For most purposes Switzerland was now the protecting power, and the great changes which had taken place in the war situation since 1940 had necessitated the present Bill. There are, his lordship said, no facilities at present for administering oaths in prisoners of war camps for

non-commissioned officers and other ranks. The Swiss officials who had succeeded to the position of the Americans as representatives of the protecting power, were unable to administer oaths or take affidavits. A man in one of these camps might wish to swear an affidavit and proceedings in this country might be held up because the affidavit could not be taken. There also were no facilities for swearing affidavits at present available to interned British subjects other than prisoners of war, either in Europe or in the Far East. The Lord Chancellor announced that it was intended that as soon as the Bill passed into law an order should be made conferring power to administer an oath on the British camp leader in a prisoners of war camp or non-commissioned officers and other ranks, and, on the camp leaders in internment camps, for civilians. Similar power would be conferred on certain other selected classes of people, for instance, masters of ships who might be prisoners of war, and officers carrying out certain administrative services in the Far East. The Bill was read a second time and committed to a committee of the whole House.

Post-War Housing.

In a speech by the Minister of Health at a meeting on 5th March, under the auspices of the National Housing and Town Planning Council, the Minister stated that housing was above all a health service, and if the nation's housing conditions were bad, the nation's health was bound to suffer. The record of housing achievement in the years—particularly the later ones—between the two wars was one of which all concerned, the building industry, the local authorities, housing associations and, also the Ministry of Health, might well be proud. Housing had not come to a complete stop; he preferred to regard it as an enforced slow march from which as soon as the war ended we should break out first into a quick march and then into double time. Before the war, houses were being built at the rate of nearly 350,000 a year. During the three and a half years of the war it had been possible to bring into use only 135,000 new houses, the majority of which were under construction when the war began, and this number had been offset by dwellings which have been destroyed or irreparably damaged by enemy action. Before the war, slums were being swept away at the rate of 60,000 dwellings every year. Since the war began very few slum dwellings had been demolished; indeed, the position in some areas had been such that we had to authorise local authorities by Defence Regulation powers to issue licences enabling slum houses to be reoccupied. Before the war large numbers of houses were being regularly repaired—voluntarily by good owners, but in the case of bad owners only as the result of the vigorous use by local authorities of their Housing Act powers. During the war they had had to concentrate, so far as repairs are concerned, on the first-aid repair of houses which have been damaged by enemy action. Briefly summarised, the position was that about 300,000 families were living in houses which had already been, or, but for the war would have been, condemned as slums, that two and a half million families were living a spartan existence in houses which have been first-aid repaired, and that many others were living in overcrowded conditions. Thanks to the grand work of all concerned, first-aid repairs had been done, but there were nearly 100,000 houses which were empty and could not be occupied until substantial further repairs were carried out. Work was proceeding to restore a considerable number of these empty houses to a condition fit for occupation. In conjunction with his colleagues and with the War Damage Commission a scheme was being launched right away for accelerating the repair of 40,000 of these houses, starting in twenty-four of the towns and cities which had suffered most severely from air raids. The houses selected were agreed with the War Damage Commission as houses in respect of which a "cost of works" payment is appropriate. As to the maintenance of existing houses in reasonable condition, the Ministry of Works were arranging for the retention in the various regions of a minimum labour force for carrying out essential maintenance work. With regard to the building of new houses, they were already making the preliminary arrangements for the carrying out of a modest programme for agricultural workers during 1943. Taking a glimpse into the future, the Minister said that the completion of the repair of war-damaged houses, the rebuilding and replanning of cities, the overtaking of the accumulated arrears of ordinary maintenance and repair, the clearance of the slums, the abatement of overcrowding and provision for general needs held up and unsatisfied during the war, including the needs of families who had never lived together before, might mean aiming at a target figure of between three and four million houses. The Sub-Committee on the Design and Planning of Houses and Flats had been asked to make recommendations as to the design, planning, lay-out, standards of construction and equipment of dwellings for the people throughout the country, and had collected material and information from a wide range of organisations. The Rural Housing Sub-Committee was also giving valuable assistance and advice. Another committee was considering the part that private enterprise could best play in post-war housing, the conditions in which it could effectively operate and the methods of finance and organisation required. The Minister referred also to the recent circular which he had issued to local authorities (*ante*, p. 88). The assurance given by the Minister will give general satisfaction. We shall look forward to a prompt post-war frontal attack on the problems of housing shortage and bad accommodation.

Public Assistance and the Beveridge Plan.

A valuable contribution to the discussion that is raging over the Beveridge plan for social security was made by Professor J. R. Hicks and Mrs. Hicks on 24th February to the Manchester Statistical Society. From the point of view of local government, the paper stated, the most significant item in the Beveridge plan was the proposal to abolish the poor law. Public assistance under the plan was to cease to be a local responsibility, and only the provision of institutions was to be left to local authorities. This was the logical conclusion of a process that had been going on for many years, and the case for it was overwhelming. The change must be accompanied by the right sort of financial adjustment between central and local government. This could be achieved if the cost of public assistance was taken from the local authorities and borne by general insurance contributions or by central taxation. It could be achieved even if the cost remained on the rates, so long as it was spread over the whole country. If either course was followed, there would be a great improvement in the position of the most needy authorities. It would be tragic if neither of these things would be done and the cost of public assistance were left on those authorities which had been most burdened by it in the past. The poor parts of the country would be left to the receipt of charity as special areas. What was needed, said the authors, was not charity, but justice. It is to be hoped that these timely remarks will bear fruit. It has been justly said that the Beveridge proposals need involve little more than a redistribution of burdens. A wide distribution of the incidence of an evil is the basis of any sound insurance scheme. The finance of the scheme, therefore, becomes all-important. Similar reasons brought about the greater spreading of the burden of rates from the factories and transport undertakings in areas where unemployment was rife by means of the derating provisions and the general Exchequer grant of the Local Government Act, 1929. What the paper seems to envisage is a further application of the same principle so that the country as a whole bears the burden of public assistance as a whole.

War Damaged Churches.

Churches have been among the special targets of Nazi bombs, and their war damage problems call for special consideration. The Bishop of London, in moving general approval of the Reorganisation Areas Measure in the Church Assembly, on 2nd March, said that in one area in London, not in the City, out of six parish churches in adjoining parishes, only one was standing. In most of those areas it would not be desired to rebuild churches exactly as they were before. The new measure applied only to areas declared by the Ecclesiastical Commissioners to be reorganisation areas. No parish was to be included unless a church had been destroyed or extensively damaged, or the size, character or location of the population had changed materially, or was likely to change as a result of causes attributable to the war or to planning schemes. It was provided that the Diocesan Reorganisation Committee, in preparing a scheme, should, as far as possible, consult with the patrons and incumbents and provincial church councils. The formation of new benefices, the dissolution or alteration of old ones, the endowment and staffing of benefices and the demolition or disposal and restoration or provision of churches and other buildings, were among the kind of things that needed doing under such a scheme. The measure provided for the vesting of endowments in the Commissioners, who would make, out of the common fund, payments for stipends and other charges, provision for the restoration and rebuilding of churches, and the substitution of churches on other sites. A court of appeal would also be set up to consider objections to any scheme. The Bishop of London ended by saying that the measure was practical, flexible and sympathetic, and that its primary purpose was not to set up machinery, but to ensure pastoral supervision. An endeavour had been made at every stage to permit of consultation with every affected interest, though not to such an extent as to prevent definite action. After some debate the Assembly gave general approval to the measure and referred it to an appointed committee.

Recent Decision.

In *Luccioni* v. *Luccioni*, on 8th March (*The Times*, 9th March), the Court of Appeal (Scott, MacKinnon and du Parcq, L.J.J.) held on an application under s. 42 of the Matrimonial Causes Act, 1857, for leave to dispense with the service of a wife's petition for divorce on her husband, that where the husband had deserted her in 1936 and was in Paris at the outbreak of the war, but had not been heard of since, in spite of recent inquiries, the President had exercised his discretion correctly in refusing to give such leave, as it was a real hardship for the respondent to be deprived of his status by a decree made in his absence and without knowledge that proceedings were pending.

The Definition of Net Profits.

THE above question was considered by the Court of Appeal in *Peters* v. *Bradsworth* (unreported) on 17th November, 1942. The plaintiff's case was that he and his wife had been employed by the defendant in accordance with the following document, dated the 11th August, 1931 :—

"Terms of Engagement.—Mr. Charles Bradsworth engages Mr. Bernard Peters and his wife to manage and conduct, under the direction of the proprietor, the businesses of Fruit, Poultry, Egg and General Greengrocery carried on at 163, 244 and 246, High Street, West Bromwich.

"The agreed remuneration to be £6 per week, also 25 per cent. (tax free) of the net profits, accruing from the said businesses.

"The net profits shall consist of the moneys left after deduction of all liabilities, such as unpaid bills, rent, rates, etc."

The engagement terminated on the 20th July, 1940, and a writ was issued on the 31st July, 1940, claiming an account of moneys to which the plaintiff was entitled, after giving credit for sums already paid. The statement of claim alleged that, in ascertaining the net profits, the following items had improperly been debited as "trading expenses" :—

(*a*) Income tax and Sched. D, amounting to £3,500 19s. 4d. ;

(*b*) Drawings at £8 per week by the defendant, amounting to £4,096 ;

(*c*) Allowance of £1 a week to a relation of the defendant (not employed in the business), amounting to £312 ;

(*d*) Rent in respect of the freehold premises (the property of the defendant) in which the businesses were carried on), amounting to £2,033 6s. 8d.

These amounts were in respect of a period going back to the 1st October, 1929 (when the employment first commenced), and the plaintiff claimed 25 per cent. of these amounts, as being part of the net profits available for division. It was contended that the expression "net profits" should be interpreted in the ordinary commercial sense, viz., the balance remaining after outside creditors had been paid. In other words, the proprietor of the business was not a creditor, and amounts paid to himself (such as his own salary, income tax and "rent" of his own property) were not "liabilities" which could properly be deducted in arriving at "net profits."

The defence was that the parties had had their own definition of "net profits," and the plaintiff was disentitled, by reason of his eight years' acquiescence, from setting up any other interpretation. The plaintiff had had full control as manager, with access to all books and documents, and was aware that the defendant's £8 a week (and £1 for his relative) had always been taken out of the till. Not only the defendant's income tax, but the plaintiff's own income tax, had been paid (like the rates) as a trading expense. Some of the cheques for the defendant's rent had been made out in the plaintiff's writing, for signature by the defendant. Twice a year it had been customary for the parties to have a "draw" on the current account, when the available balance had been divided in the proportion of 25 per cent. to the plaintiff and 75 per cent. to the defendant. The calculations of the amounts available for division had been made by the plaintiff himself (as he admitted) without objection to the prior payments to the defendant of his £9 a week, rent and income tax. The plaintiff had thus received, as commission, an average of £250 12s. 6d. per annum.

Mr. Justice Farwell held that it was impossible to put any very definite meaning upon the parties' definition of "net profits," which left it open to some ambiguity as to what the term meant. The question had been resolved, however, by the way in which the commission had in fact been ascertained. There was no suggestion of any concealment by the defendant, and the amount of the commission had been arrived at as a result of the plaintiff's own calculations. It was therefore not open to the plaintiff to ask for the matter to be reopened. Judgment was given for the defendant, with costs.

The Court of Appeal reversed this decision. The Master of the Rolls held that there was no obscurity in the agreement, and there was no need to look to the conduct of the parties in determining its true meaning. The ascertainment of net profits of a business could easily be done on recognised principles. The defendant was therefore not entitled to deduct income tax under Sched. D, which—unlike excess profits tax—was not a matter to be deducted as an outgoing of the business for the purpose of ascertaining the net profits. Income tax was only chargeable on net profits—after they had been ascertained. Income tax under Sched. A, however, could properly be treated as an expenditure of the business, and necessary for the purpose of earning the net profits.

The defendant's drawings of £8 a week (and the £1 paid to his relative) were also not permissible under the agreement, as neither of them rendered services to the business entitling them to a salary. As the proprietor, the defendant was entitled to draw from the business what sums he liked. Nevertheless, in settling the plaintiff's commission, the defendant was not entitled (on the wording of the agreement) to treat his drawings as outgoings of the business.

The agreement did specifically provide for the deduction of "rent" as a liability, but no actual rent was paid, as the defendant owned the freehold of the shops. The plaintiff's case was that "rent" could only be deducted if it were actually paid to a third person as landlord. As the business had never been carried on upon the premises of an outside landlord, it was argued that no rent was deductible. It appeared, however, that during the whole period of the service a sum of £200 a year had been paid out of the business banking account as a notional rent. It was part of the agreement that, in ascertaining the net profits, an appropriate sum should be charged for rent. The parties had not quantified the amount in the agreement, but their omission to do so did not render the agreement void. The amount must be reasonable, and would be fixed by the court in the last resort. The practice and conduct of the parties had showed that a reasonable sum was £200 a year, which was accordingly a proper deduction in ascertaining the net profits.

Lord Clauson and du Parcq, L.J., concurred in allowing the appeal. An account was therefore ordered of the amounts remaining due to the plaintiff, the defendant to be entitled to set up the Statute of Limitations as advised.

The above case affords an illustration of the extent to which the rights of parties may be influenced by their course of conduct. The principle upon which the court acts was stated by Farwell, J., as follows: "No doubt if this written agreement were clear and unambiguous in its terms, it would not be in any way altered by any practice which the parties might have employed, even over a very long period. It is not open to parties to vary the terms of a clear and unambiguous written agreement by subsequent conduct."

The Master of the Rolls stated, on the same point, as follows : "Is any agreement to vary to be inferred from the conduct of the parties ? It is perfectly true that for a number of years the plaintiff was in fact receiving sums which did not amount to what he was entitled to upon the construction of the agreement which I think is the right one, and there is almost a natural inclination to approach a course of conduct, pursued by grown-up and intelligent people over a course of years, as being one for which in some way a legal basis must be found. But that is merely an inclination and cannot be allowed to stand against the clear facts of the situation. The person who asserts that an agreement has been varied, and that an inference ought to be drawn to that effect from conduct, is under the burden of establishing that proposition." And later in the same judgment : "The conduct of the parties in quantifying the reasonable rent is one which this court ought to accept, but . . . it is a very different thing, on the one hand, to infer from conduct an agreement to quantify a matter of that kind, and, on the other hand, to infer from conduct a new agreement under which one of the parties gives up very substantial rights which belong to him under the contract."

A Conveyancer's Diary.

War Damage Contribution.

IN our issue of 20th February we published a letter from a correspondent about the incidence of War Damage Contribution as between the parties interested in settled realty. The question is one which I discussed in the "Diary" of 30th August, 1941, and I am afraid that I do not entirely agree with what is argued in the letter. As the correspondent asked for our views, it may be permissible to refer to the matter here.

Four kinds of disposition are mentioned :

(*a*) A gift by will of real property to A for life and thereafter on the trusts of residue, which trusts include a trust for sale : in this case, during A's life, the land is, of course, settled land, and A either has, or can call for, the legal fee simple.

(*b*) A gift by will of realty to trustees on trust to permit A to occupy the same during his life, with remainders as above : such a disposition is identical in effect with that set out at (*a*), and need not be considered separately ; see, for instance, *Re Acklom* [1929] 1 Ch. 195.

(*c*) A gift by will of realty to trustees on trust to let and manage the same with all the powers of an absolute owner and to pay the income to A for life, with remainders as above : this disposition also makes A tenant for life under the Settled Land Act and it may therefore be considered along with (*a*) and (*b*).

(*d*) A gift by will of realty to trustees on trust for sale, and to pay the income to A for life with remainders over.

The cases thus boil down to two primary classes, viz., those where the land is settled land under the Settled Land Act and A is tenant for life, and those where the tenant for life is tenant for life only of proceeds of sale arising under a trust for sale. In the first group, A normally has the legal estate ; in the second, it is in the trustees. For completeness, however, we should also consider a third class of case, viz., where the legal estate is still in the testator's personal representatives. If the land is settled land they will hold subject to the right of the tenant for life to call for a vesting assent ; where there is a trust for sale the trustees can call for an assent on trust for sale.

The writers of the letter feel that in all the cases where A is a tenant for life the War Damage Contribution falls on him under

s. 23 of the War Damage Act, and they state that they cannot see how s. 82 (which makes contribution a capital payment) affects the matter. They agree that in the trust for sale case the trustees have to pay the contribution, charging it to capital.

I now turn to examine the actual enactments. Under s. 23 (1) (*a*) "An instalment of contribution becoming due in any year in respect of any contributory property shall, save as otherwise provided in this Part of this Act—(*a*) if there is at the relevant date only one proprietary interest subsisting in the whole of that property, be payable by the owner of that interest." The "relevant date" in relation to the instalment payable on any 1st July means the previous 1st January (s. 20 (2)). Pausing there, the position is that where there is only one proprietary interest on 1st January, the person who then has that interest has to pay the Revenue. The expression "proprietary interest" is defined in s. 95 (1) as meaning (*a*) the fee simple, i.e., the legal fee simple, and (*b*) any tenancy except a "short tenancy." It is not necessary here to discuss the term "short tenancy" as used in the Act. The consequence is that if in any of the cases given by the writers of the letter the land is not in lease at all, or is subject only to a short tenancy, at the material date the person with the legal fee simple has to pay the tax. That means that the payment has to be made by the tenant for life in the Settled Land Act cases, or the trustees for sale, or the personal representatives, as the case may be.

If there is more than one proprietary interest, the direct duty to pay the Revenue falls on the owner of that proprietary interest which gives the right to possession (s. 23 (1) (*b*)). There are various provisions under s. 24 and the Fourth Schedule for the giving of indemnities as between the various persons entitled to proprietary interests. The question in these cases is who has primarily to bear the proportion of the contribution which falls on the freeholder as distinct from any lessee. Again, the position is that this liability falls on the tenant for life, trustees for sale, or personal representatives, according as who has the legal estate.

The next question is what, if anything, has to be done, among the parties entitled under the settlement, for adjusting as between the capital and income of the settled property the primary liability arrived at as above.

The first proposition is that under s. 82 "contributions and indemnities given under Part I of this Act . . . shall be treated for all purposes as outgoings of a capital nature." Next, there is s. 48 (1), which reads as follows:—

> "The purposes—(*a*) authorised for the application of capital moneys by section 73 of the Settled Land Act, 1925, by that section as applied by section 28 of the Law of Property Act, 1925, in relation to trusts for sale, and by section 26 of the Universities and College Estates Act, 1925; and (*b*) authorised by section 71 of the Settled Land Act, 1925, by that section as applied as aforesaid, and by section 31 of the Universities and College Estates Act, 1925, as purposes for which moneys may be raised by mortgage, shall include the discharge of any liability as, or as mortgagee of, a direct or indirect contributor."

The other enactment that is material is s. 75 (2) of the Settled Land Act, 1925, which provides that the investment or application of capital moneys by S.L.A. trustees "shall be made according to the direction of the tenant for life."

The effect is thus as follows: Where the legal estate is in a tenant for life, he has to pay the Revenue or indemnify the person who pays the Revenue (s. 23). But the payment is a capital one (s. 82). And it is one for which capital moneys are applicable (s. 48). Under the Settled Land Act, s. 75 (2), the tenant for life can direct the application of capital moneys to authorised purposes. He will, therefore, in practice, direct the S.L.A. trustees to make the payment in question, on his behalf, out of capital moneys. If there are no capital moneys in the settlement, or if it is otherwise necessary or convenient to do so, the S.L.A. trustees can raise the sum by mortgage (War Damage Act, s. 48 (1)).

Where the legal estate is vested in trustees for sale the position is simpler. The trustees for sale have to make the payment: it is a capital one (s. 82); under s. 48 (1) it is an authorised purpose for which they can use capital moneys, raising them if necessary by mortgage, and they will no doubt so pay the contribution.

Where the legal estate is in personal representatives the position is exactly the same as if it is in trustees for sale. The primary liability is on the personal representative as having the legal estate (s. 23). They will defray it as if they were trustees for sale, because under s. 39 (1) (ii) of the Administration of Estates Act, 1925, personal representatives have "all the powers, discretions and duties conferred or imposed by law on trustees holding land on an effectual trust for sale."

The net effect of all these considerations is that as between capital and income comprised in a settlement, whether such settlement is by trust for sale or by direct trusts, the contribution, or the cost of indemnifying the owner of another proprietary interest, falls on capital. That may or may not be a good thing; but the Act states clearly that the intention of Parliament was that these payments should be capital ones, and it is satisfactory that there is not the discrepancy, suggested by the writers of the letter, between the incidence of those payments in cases of direct trusts and trusts for sale.

Landlord and Tenant Notebook.

"A Substantial Portion of the Whole Rent."

Two correspondents have commented upon different points sought to be made in the "Notebook" of 13th February last (87 SOL. J. 54). One queries my conclusion that s. 10 (1) of the Rent, etc., Restrictions Act, 1923—"For the purposes of proviso (i) to subsection (2) of section twelve of the principal Act (which relates to the exclusion of dwelling-houses from the principal Act in certain circumstances), a dwelling-house shall not be deemed to be bona fide let at a rent which includes payments in respect of attendance or the use of furniture unless the amount of rent which is fairly attributable to the attendance or the use of furniture, regard being had to the value of the same to the tenant, forms a substantial portion of the whole rent"—does not apply to houses first controlled by the Rent, etc., Restrictions Act, 1939. A conclusion which I reached with some hesitation, as the result would indeed be a position not intended by those who brought it about.

My correspondent succinctly states his arguments in the following two sentences: (1) The First Schedule to the 1939 Act merely substitutes for the reference back to s. 12 of the 1920 Act a reference to s. 3 of the 1939 Act. (2) The provision dealing with furnished lettings in the 1939 Act is still qualified by s. 10 of the 1923 Act.

Re-examination of the machinery of the 1939 Act convinces me that the criticism is well founded, and I am grateful for the assistance rendered.

The First Schedule to the 1939 Act provides that s. 12 (2) of the 1920 Act shall not apply to houses controlled by the 1939 Act; so at first sight it looks as if there was nothing for the 1923 provision to qualify. But later on the same schedule does, as my correspondent points out, provide that that qualification shall apply to s. 2 (3) (*b*) of the 1939 Act itself, and this is the paragraph excluding furnished lettings.

One is left wondering why those concerned in the county court case saw fit to bring in such considerations as the objects and intentions of the Legislature, apart from the actual words used; but I mention this by way of explanation rather than by way of excuse.

My second correspondent discusses the meaning of the word "substantial," giving me the benefit of his experiences in a recent county court action—again the judge actually decided the case on another point, unfortunately—in which it was (1) agreed that the word did not bear the same meaning as in the expression "a substantial meal," (2) contended by one side that it meant "having substance or body," as opposed to "illusory," and (3) by the other side, that it meant representing one-half, or at least one-third; one-eighth would not be a "substantial portion of the whole rent."

The shorter "O.E.D." gives altogether fifteen meanings of the word, including the three indicated above. The first of these three is represented by No. 5 in the Dictionary, which is at pains to point out that "the notion of solidity or quantity" is predominant in this case. I agree that this meaning, and twelve others, cannot be the meaning to be attributed to the word as used in s. 10 (1) of the 1923 Act, and the contest must be between the other two. Of these, the one corresponds to No. 13 in the "O.E.D.": "having substance; not imaginary, unreal, or apparent only; true, solid, real." This the Dictionary exemplifies by "all this is but a dreame, too flattering sweet to be substantial: *Shaks.*" (Another illustration might be James Shirley's "The glories of our blood and state are shadows, not substantial things.") The other corresponds to No. 7 in the Dictionary: "of ample or considerable amount, quantity, or dimensions," the example being "substantial reinforcements."

My correspondent maintains that "having substance or body" (as opposed to "illusory") is the original sense. This may be open to question. But, at all events, it is hardly the primary sense of the word as used to-day. And I think this is a case in which there is something to be said for both contentions, and one in which it is legitimate, in order to resolve the conflict, to inquire what mischief was sought to be remedied.

In so doing, regard should, I submit, be paid to the words of the subsection as a whole, particularly those italicised in the following excerpt: "a dwelling-house shall not be deemed to be bona fide let at a rent which includes payments in respect of . . . the use of furniture unless the amount of rent which is fairly attributable to . . . the use of furniture, *regard being had to the value of the same to the tenant*, forms a substantial portion of the whole rent"; and the facts and judgments of and in *Wilkes* v. *Goodwin* [1923] 2 K.B. 86 (C.A.), decided on 8th March, 1923 (the Act was passed on 31st July of that year) should be closely examined.

The facts were that a maisonnette was let to two ladies at £32 10s. a quarter, plus £1 5s. a quarter for the use of linoleum which covered the floors of most rooms. The tenants had some floor covering of their own, and were paying for having it stored; they asked the landlady, the respondent in the case, to remove hers. She refused. The request and refusal occurred during the first quarter of what was to be a tenancy from quarter to quarter; but, by way of compromise, the landlady agreed to a new tenancy agreement, commencing soon after the first quarter of the old

one, by which the maisonnette was let to the tenants at £20 a quarter "and to include the use of linoleum in the maisonnette." The difference, no doubt, compensated the tenants for the storage charged. About a year later, they took out an apportionment summons, and after the registrar had held that to bring a case within the proviso (to s. 12 (2) of the 1920 Act) the furniture must form a substantial part of the consideration in the minds of the parties, and found that it did not, and had been reversed by the judge, and in the Divisional Court Salter, J., had agreed with the judge, but Avory, J., had taken the view that the proviso applied only if a "furnished house" were let, the matter came before the Court of Appeal, who took time to consider their judgments; and then Younger, L.J., dissented.

The following passages from the majority judgments are in point. Bankes, L.J., said, after describing the language as "reasonably plain": "If the result is not what the Legislature intended it is for the Legislature to amend the proviso . . ." There were two tests. "The one is the *bona fides* of the letting and the other is that the rent includes payments in respect . . . furniture." "The statute does not indicate whether . . . much or little furniture is aimed at. It uses the words quite generally . . . any amount of furniture will satisfy the second test, which is not ruled out of consideration by the application of the rule '*de minimis non curat lex*.'" The learned lord justice then spoke with approval of an unreported county court judgment in which the judge concerned "speaks of the question which he has to decide as a question whether they were so trifling in value or in amount as to be negligible." Later: "Whether the linoleum in question is so trifling in value or in amount as to be negligible is for the learned county court judge to decide." And "the only safe guide" was to consider, if, having decided that the articles are furniture, "whether they are excluded from consideration by the application of the rule *de minimis*." Scrutton, L.J., took the same line; if the quantity of linoleum was substantial and not negligible, what had to be decided was whether the parties did agree to include the use of that "furniture" in the consideration for the rent, and therefore payment for it in the rent.

It seems safe to say that the Legislature took Bankes, L.J.'s hint and amended the law, and proviso, and did so by taking cognisance of the difference between "much," "little," and "trifling," and enacting that the amount of rent fairly attributable to the use of furniture, regard being had to its value to the tenant, must be ample or considerable.

Our County Court Letter.

Dangerous Dog.

In *Birch and Another* v. *Knowles*, remitted from the High Court to Burton-on-Trent County Court, the claim was for damages for negligence, viz., keeping a dog knowing it to be of a fierce and mischievous disposition, with a dislike of children, and allowing it to be taken out for exercise without a muzzle. The plaintiff's case was that a Mrs. Learmouth had called at his house with the defendant's dog, which was on a lead. While Mrs. Learmouth was in the house, the dog was tethered to a drainpipe. Cries were then heard and the dog was found on top of the plaintiff's young child, who was badly bitten about the face, and had five permanent scars. The dog had been teased by children when a puppy and had disliked children subsequently. The defendant had been warned of the dog being dangerous and had offered £2 or £3 towards the doctor's bill. A submission was made that there was no case to answer. Mrs. Learmouth had no authority to take the dog out and was not the defendant's agent. The dog was not in the possession or control of the defendant at the time. His Honour Judge Willes held that, when the dog was out for exercise, the owner took the risk of liability for any damage done. The submission was overruled. The evidence for the defendant was that he had had the dog for seven years and it had always been quiet and harmless. Judgment was given for the plaintiffs for £40, viz., £5 5s. to the father in respect of the doctor's bill and £34 15s. to the child, with costs.

The Dismissal of War Workers.

In *Ducrow* v. *The Rover Motor Car Co., Ltd.*, at Birmingham County Court, the claim was for damages for wrongful dismissal. The plaintiff's case was that, after leaving the defendants' employment, his card was marked: "Misconduct." Although a skilled man, the plaintiff had been sent to another firm as a labourer. The firm, however, had sent him back to the employment exchange, with an intimation that they did not want a man of the plaintiff's obvious intelligence as a labourer. Owing to his card being marked "Misconduct," the plaintiff had thus been offered work in an inferior grade. The defendants' case was that they had not dismissed the plaintiff, who had "walked out." If his card was marked "Misconduct," it was not done with the defendants' authority. An adjournment was granted, to enable evidence to be called on this point. The manager of the employment exchange stated that, under the Essential Works Order, an employee could only be dismissed for serious misconduct. The plaintiff had told the exchange clerk that he had been dismissed, whereupon the clerk had assumed, rightly or wrongly, that the cause of dismissal was misconduct; the plaintiff's card was marked accordingly, without reference to the defendants. This practice had been discontinued and a card was now merely marked "Discharged." The entry "Misconduct" did not prejudice the plaintiff, as many skilled men had been placed as labourers during the previous months. The defendants' labour manager stated that no man had been discharged, under the Essential Works Order, for misconduct without the employment exchange being notified to that effect. His Honour Judge Dale observed that it was an improper practice to mark a card "Misconduct" without consulting the employer. This would obviously prejudice the worker's future prospects. On the issue before the court, it was held that there had been no wrongful dismissal. Judgment was given for the defendants, with costs.

Secondary Education.

In *Birmingham Corporation* v. *Powell*, at Birmingham County Court, the plaintiffs claimed £5 as damages for breach of contract by reason of the withdrawal of the defendant's son from a secondary school before he had reached the age of sixteen. The agreement had provided, in the alternative, that the boy should complete four years at the school, but neither condition had been fulfilled. The defendant's case was that he had signed the agreement in peace-time. Owing to the war, his son's education had suffered considerably. Moreover, it was more beneficial for the country and for the boy that he should be doing essential war work. His Honour Judge Finnemore observed that the claim, in law, was for liquidated damages, and not for a penalty. It was not for the court to decide whether the refusal to give consent to the boy leaving the school was unreasonable. Judgment was given for the plaintiffs, with costs.

Overpaid Rent.

In *Wood* v. *Scarborough* at Grantham County Court, the claim was for £56 10s. overpaid rent. The plaintiff's case was that he had paid £6 per month to the defendant as the rent of a cottage to the 20th March, 1941. On being informed by a neighbour that the maximum rent was 10s. a week, the plaintiff arranged with the defendant to pay £4 a month and to be given a receipt for £2. As from the 20th June, 1941, the plaintiff accordingly paid 10s. a week. In 1942 the plaintiff received notice to quit, and, having ascertained that the standard rent was £7 per annum, he claimed repayment of the excess. The case for the defendant was that he farmed 250 acres, and he had rented the cottage from his landlord since 1940. This was to provide a home for a labourer, and the rent paid to the landlord was £7 per annum and £5 5s. 4d. a year for rates. About two months later, the defendant approached him in reference to the cottage, hinting that he (the defendant) was in a position to requisition it. The plaintiff offered and paid 30s. a week, to include shooting rights, but the rent was later reduced to £1. On advice from the rural district council, a further reduction was made to 10s. a week. An offer was made, in court, to regard this as the rent from the start, whereby the plaintiff would be entitled to £18. His Honour Judge Langman found in favour of the plaintiff, on the issue of standard rent. It transpired that, if judgment were given for £54 10d., the defendant would lose by the transaction, owing to the liability for rates. By consent, the rates were included in the standard rent, and judgment was given for the plaintiff for £43 19s. 4d., with costs.

Correspondence.

[*The views expressed by our correspondents are not necessarily those of* THE SOLICITORS' JOURNAL.]

Paper Salvage.

Sir,—Every solicitor accumulates a large quantity of correspondence and documents.

Besides papers, most solicitors will have a number of out-of-date law books taking up space on their shelves.

Waste paper of all kinds is urgently needed for re-pulping and making into paper and board, which are required for important purposes in connection with the making of munitions of war.

Now is the time to get rid of the accumulation of papers and old books.

It is hardly necessary to say that the task of selecting out of a collection of papers, many of which may, strictly speaking, belong to clients, those which can safely be handed over for salvage, is always a troublesome one, but I feel that I am entitled to appeal to solicitors in spite of the difficulties of the present situation to make this an occasion to clear their offices and at the same time directly to help the prosecution of the war.

Any inquiries as to what should be done can be addressed to the Directorate of Salvage and Recovery, Berkeley Court, Glentworth Street, London, N.W.1, and will be quickly answered.

G. B. HUTCHINGS,
Principal Director of Salvage and Recovery,
Ministry of Supply.

London, N.W.1.
9th March.

To-day and Yesterday.

LEGAL CALENDAR.

March 15.—On the 15th March, 1621, the report of the committee on abuses in the courts of justice was presented to the House of Commons, expressly charging the Lord Chancellor, Francis Bacon, Viscount St. Albans, with corruption in taking bribes from suitors. The committee had passed a resolution that the charges ought to be made the subject of an impeachment. The accusations were at first confined to two cases, but they were subsequently increased to twenty-two. Bacon, who seems to have been taken by surprise, was soon announced to be ill and unable to attend the House of Lords, the Chief Justice of the King's Bench being authorised to preside in his absence. Eventually he confessed the receipt of the several sums charged, but only acknowledged that a few were given while a suit was depending. His fall came with a sentence of a heavy fine and imprisonment.

March 16.—On the 16th March, 1775, the House of Commons ordered "that leave be given to bring in a Bill for applying the funds provided for rebuilding the offices of Six Clerks of the King's Court of Chancery, by an Act made in the fourteenth year of the reign of his present Majesty, intituled, 'An Act for rebuilding the office of the Six Clerks of the King's Court of Chancery, and for erecting offices for the Registrar and Accountant General of the said Court, for the better preserving the records, decrees, orders and books of account, kept in such offices,' in building offices for the said Six Clerks in the Garden of Lincoln's Inn, instead of rebuilding the present Six Clerks Office in Chancery Lane."

March 17.—On the 17th March, 1809, Mary Bateman was tried at York for the murder of Rebecca Perigo. She had long practised as a sort of witchcraft broker extorting money from the credulous for supernatural assistance supposed to be rendered by a fictitious principal. Her last exploit was to plunder Rebecca and her husband of about £70, besides clothes and furniture to a considerable value, under pretence of engaging a "Miss Blythe" to relieve the woman from the effects of an "evil wish." They parted with all sorts of things, a goose, a pair of shoes, a tea caddy, sixty pounds of butter, two or three hundred eggs, three bottles of spirits, two table cloths, several shirts, quantities of tea and sugar and much more besides, receiving in return a series of letters with directions, predictions and further demands, always ending: "Your wife must burn this as soon as it is read or it will not do." At last, when the day of reckoning seemed to be near, there arrived some powders to be eaten in a pudding. They were a deadly poison and Rebecca died. Mary Bateman was now found guilty and hanged.

March 18.—Mr. George Skene was chief clerk of the Queen Square Police Office, receiving a good salary. Through his hands passed all the incomings, the fines, the fees and the like, and also the outgoings which were always greater. Every quarter he presented his accounts to the receiver-general to the several police offices and was reimbursed the deficit. One day it was found that he had presented several forged receipts in respect of payments for rent, stationery and printing amounting to more than twice the sums actually paid. He was found guilty of forgery and hanged at Newgate on the 18th March, 1812. The Marquis of Huntley and several magistrates had given evidence, speaking in the highest terms of his integrity. He behaved with great fortitude on the scaffold.

March 19.—On the 19th March, 1669, Pepys sat on a court martial for the first time. It was held on board a yacht moored opposite St. Katherine's by the Tower. "Here was tried a difference between Sir L. Van Hemskirke, the Dutch captain who commands the 'Nonsuch,' built by his direction, and his lieutenant; a drunken kind of silly business. We ordered the lieutenant to ask his pardon and have resolved to lay before the Duke of York what concerns the captain, which was striking of his lieutenant and challenging him to fight, which comes not within any article of the laws martial." Pepys, who had been given a captain's commission to qualify him to sit at courts-martial, was present only at the hearing and not for the judgment lest a precedent might be created for making packed courts.

March 20.—On the 20th March, 1807, a gardener named Duncan was convicted at the Kingston Assizes of the murder of his eighty-two-year-old master, Mr. Chivers, of Clapham. He had only been in his service ten days when the old gentleman threatened to dismiss him and struck him with his cane. He lost his temper and retaliated striking him twice in the face with his spade.

March 21.—On the 21st March, 1834, six respectable farm labourers were condemned at the Dorchester Assizes to seven years' transportation. The charge was administering unlawful oaths, but their real offence in the eyes of the authorities was that they had formed a sort of primitive trade union. These were the "Tolpuddle Martyrs." Public protest, however, secured their return from Australia. In 1838 four came back; the other two arrived later.

NON-RECOGNITION.

A new legal story is current about an elderly barrister who won an action in the High Court by the apt citation of a rather obscure authority. Some days later he was having a cup of tea at his club when the judge noticed him and came over to congratulate him on his knowledge of the point of law by which he had succeeded. "Thank you," answered the old gentleman, peering at him through his glasses. "Were you in court at the time?" Of course, both counsel and judges look very different in and out of court and the realisation of this won Lord Simon a case in his early days at the Bar. On circuit he was defending a man against whom the most dangerous evidence depended on a certain ironmonger's recollection. The day before the hearing the young barrister went to the shop of the witness and bought a small piece of wire. In the course of his cross-examination, he asked: "I suppose you remember all your customers?" "Certainly." "So you would remember those who went into your shop yesterday?" "Yes, every one." "I suppose there's nobody in court who came into your shop yesterday?" The witness looked round carefully and answered: "No. Nobody." Counsel then produced the piece of wire which the witness had to admit he had sold to him. After that the reliability of his memory no longer carried conviction to the jury.

Review.

Rayden's Practice and Law in the Divorce Division Fourth Edition. Consulting Editors: NOEL MIDDLETON, of Gray's Inn, Barrister-at-Law, and C. T. A. WILKINSON, Registrar of the Probate and Divorce Division. Editors: J. F. COMPTON MILLER, of the Inner Temple, Barrister-at-Law, and F. C. OTTWAY, of the Probate and Divorce Registry. 1942. Royal 8vo. pp. cxxvii, 782 and (Index) 117. London: Butterworth & Co. (Publishers), Ltd. 67s. 6d. net.

The fourth edition of this classical work brings up to date the statute and case law, the rules and the practice of divorce law. The main changes are a result of the Matrimonial Causes Act, 1937, and the Rules of that year. The editors point out that that Act "carries into legislative effect most of the outstanding recommendations of the Divorce Commission of 1910, sweeping away much of the logic of ecclesiastical law, introducing a considerable facility of divorce in cases difficult to be defined, viz., desertion, cruelty and incurable unsoundness of mind, and creating new grounds for nullity hitherto unknown to the English law." The text of this edition has been completely revised, and the Forms and Precedents will be of great assistance to practitioners. To every one who has to deal with the law and practice of divorce "Rayden" is indispensable.

Books Received.

The International Law of the Sea. By A. PEARCE HIGGINS, C.B.E., K.C., LL.D., and C. JOHN COLOMBOS, LL.D., of the Middle Temple, Barrister-at-law. 1943. Demy 8vo. pp. xiii and (with Index) 647. London: Longmans, Green & Co., Ltd. 42s. net.

The New County Court Practice. Supplement, 1943. By His Hon. Judge DALE and BRUCE HUMFREY, Registrar of Croydon, Dorking and Redhill County Courts. With a special emergency section by J. BRAY FREEMAN, of the Inner Temple, Barrister-at-law. Demy 8vo. pp. li, 304 and (Index) 19. London: Butterworth & Co. (Publishers), Ltd. 27s. 6d. net.

Fur Trading. Guide to War Legislation for Fur Manufacturers and Traders. 1943. pp. 60 (with Index). London: The Retail Fur Trade Association. 5s. net.

The Judicial Function in Federal Administrative Agencies. By JOSEPH P. CHAMBERLAIN, NOEL T. DOWLING, and PAUL R. HAYS, of the Legislative Drafting Research Fund, Columbia University. 1942. Medium 8vo. pp. xii and (with Index) 258. London: Oxford University Press. 16s. 6d. net.

Burke's Loose Leaf War Legislation. Edited by HAROLD PARRISH, Barrister-at-law. 1942 Volume. Part 13. London: Hamish Hamilton (Law Books), Ltd.

Massachusetts Law Quarterly. January, 1943. Volume XXVIII. No. 1.

Oregon Law Review. December, 1942. Volume XXII, No. 1.

The North Carolina Law Review. December, 1942. Volume 21, No. 1.

Wills and Bequests.

Mr. Robert Marshall Middleton, barrister-at-law, of the Temple and of Bengeo, Herts, left £41,937, with net personalty £32,903.

Mr. Rayner Maurice Neate, solicitor, of Golders Green, left £48,170, with net personalty £46,712.

Sir William Phene Neal, solicitor and Lord Mayor of London, 1930–1, left £661, with net personalty nil.

Mr. Frederick Charles Russia Sneath, solicitor, of Hendon, N.W., and of Lincoln's Inn, left £49,390, with net personalty £41,164.

Points in Practice.

Questions from solicitors who are REGISTERED ANNUAL SUBSCRIBERS are answered, without charge, on the understanding that neither the Proprietors nor the Editor, nor any member of the staff, are responsible for the correctness of the replies given or for any steps taken in consequence thereof. All questions must be typewritten (in duplicate), addressed to the Editorial Department, 29–31, Breams Buildings, E.C.4, and contain the name and address of the subscriber, and a stamped addressed envelope.

Life Interest to Married Woman—CAPITAL TO VEST IN HER IF SHE CEASES TO RESIDE WITH HUSBAND.

Q. A client of ours has instructed us to prepare his will leaving his residuary estate to his son and his married daughter. The share of the daughter is not to vest in her, but the income thereof is to be paid to her during such time as she resides with her husband, but immediately on ceasing to do so, she is to have both capital and income. Our client is very dogmatic on these points, but does not wish the will to provide for these terms in such language as would be apparent to anyone reading the will. We had thought to give her the income only during coverture, but are afraid that this might not meet all the circumstances which might arise. The testator also does not wish to effect the business by way of giving the trustees of the will a discretionary trust. Can you suggest any way in which the testator's wishes in their entirety can be carried out ?

A. We think the client should be advised that the proposed provision would almost certainly be held to be void as being in the nature of an encouragement to the daughter to leave her husband and therefore contrary to public policy. *Cartwright* v. *Cartwright* (1853), 22 L.J. Ch. 641. This case has been distinguished in other cases, e.g., *Marlborough* v. *M.* (1901); *Re Lovell, Sparks* v. *Southall* (1919), 88 L.J. Ch. 540, but it is considered the provision suggested would come within the principle of the earlier case. There would be no apparent legal objection to giving the income during coverture and on coverture ceasing the capital to vest in the daughter. There would also be no apparent objection to a gift of capital to take effect if the husband deserted the wife or the marriage was dissolved—presumably there is no possibility of a decree of nullity. We regret we cannot suggest any other way of meeting the client's wishes except by giving the trustees a discretion.

Repairs to Shop Front.

Q. A lets a shop and premises to B by lease. B covenants to keep the interior of the premises, fixtures and additions, including the glass in the windows, shop front and doors, in good condition, and to do inside and outside painting at stated periods. A covenants to keep roofs, main and outside walls, except glass in windows. There is the usual covenants for quiet enjoyment and arbitration clause. The shop front, which is a wooden one, is in need of repair owing to dilapidation of woodwork. Who is liable to replace or repair the defective woodwork, landlord or tenant ?

A. On the wording of the covenant, the tenant is only liable to repair the glass in the shop front. The woodwork must therefore be replaced or repaired by the landlord.

Option to Purchase.

Q. A, the owner of a house, instructed B, an estate agent, to arrange a tenancy of such premises and B found a suitable person as tenant, C. There is some difference of opinion what then transpired, but A contends that after B had negotiated the tenancy with C that he, A, arranged with C that C should have an option to purchase the property, and A agrees he then requested B to insert a clause to this effect in the tenancy agreement which B prepared. C has exercised the option to purchase and B maintains that he is entitled to his usual commission on the sale of the property to C. B's contention is that he introduced the tenant, and that even if A did negotiate the matter as far as regards the option, yet that he, B, was really instrumental in selling the property. The only case on the matter appears to be one referred to on p. 260 of vol. 1 of "Halsbury," 2nd ed., *Cox & Son* v. *Starley* (1913), 48 L.J. 705, but which the writers have unfortunately been unable to find and which they are now informed must be out of print. Advice would be appreciated as to B's right to commission, as apparently from the note in "Halsbury" on the decided case it is quite clear that an agent is entitled to commission where he has negotiated the option on introducing the tenant, but we can find no case which actually decides as to whether where the agent having introduced the tenant, yet subsequent thereto it is the owner of the property who actually negotiates the option with such prospective tenant.

A. The case quoted is reported in the *Law Journal* newspaper for the 6th December, 1913. The county court judge decided in favour of the house owner, in reliance upon *Toulmin* v. *Millar* (1887), 58 L.T. 96. The Divisional Court ordered a new trial, the result not being reported. On the evidence in the query, it appears that B has a good claim to commission, although it is agreed that there is no authority directly in point, and the question is therefore somewhat open.

An ordinary meeting of the Medico-Legal Society will be held at Manson House, 26, Portland Place, W.1 (Tel. LANgham 2127), on Thursday, 25th March, at 5 p.m., when a paper will be read by C. Keith Simpson, M.D., B.S., on "*Rex* v. *Dobkin*" (the Baptist Church Cellar Case).

Notes of Cases.

JUDICIAL COMMITTEE OF THE PRIVY COUNCIL.

Attorney-General for Alberta *v.* Attorney-General for Canada.

Viscount Maugham, Lord Russell of Killowen, Lord Macmillan, Lord Romer and Lord Clauson. 1st February, 1943.

Canada (Alberta)—Provincial legislation dealing with bankruptcy—Exclusive legislative powers of Dominion—Ultra vires legislation—British North America Act, 1867 (30 & 31 *Vict. c.* 3), *ss.* 91, 92—*Debt Adjustment Act (Alberta)*, 1937.

Appeal by special leave by the Attorney-General of Alberta from a decision of the Supreme Court of Canada upon a reference under the Supreme Court Act, s. 55.

Section 91 of the British North America Act, 1867, gives to the Dominion Legislature exclusive legislative authority as to "all matters coming within the classes of subjects" enumerated under twenty-nine heads of that section, the 21st head being "bankruptcy and insolvency." The matters being within the legislative competence of the provincial Legislatures are enumerated in s. 92. From 1920 onwards there was much distress in the Province of Alberta and various statutes were passed by the provincial Legislature to relieve it. The Debt Adjustment Act (Alberta), 1937, was one of these Acts. It constituted the Debt Adjustment Board. By s. 6 the board was given power to make inquiries with regard to the property of any resident debtor or resident farmer. By s. 8, unless the board gave a permit in writing, (*a*) no action for the recovery of any money which was recoverable as a liquidated demand; (*b*) no proceedings by way of execution; (*c*) no action for sale or procedure under a mortgage and other proceedings therein specified of similar character could be brought against a resident debtor. Under s. 10, a creditor could apply for a permit to begin proceedings. Section 21 authorised any resident debtor to call on the board to investigate his financial position and to endeavour to negotiate a settlement of his debts. Section 32 made it a penal offence to take legal proceedings in violation of the provisions of the Act. The question for the determination of the Supreme Court of Canada was whether the Debt Adjustment (Alberta) Act, 1939, was *ultra vires* the Legislature of Alberta. The Supreme Court of Canada held it to be *ultra vires*.

The Attorney-General of Alberta appealed.

VISCOUNT MAUGHAM, delivering the opinion of the Board dismissing the appeal, said there was no doubt but that the Debt Adjustment (Alberta) Act, 1937, was legislation in relation to insolvency, a class of subject within the exclusive legislative authority of the Parliament of Canada. The purpose of the Act was to relieve persons resident in the province and their estates from an enforceable liability to pay debts incurred before the 1st July, 1936, and in many cases to compel creditors to accept compromises approved by the board. This deprived the creditor of his right to present a bankruptcy petition under the Dominion Bankruptcy Act. The Act of 1937 seriously interfered with the existing legislation of the Dominion and constituted an invasion of the Dominion's exclusive legislative powers and obstructed legislation on these subjects, accordingly the appeal failed.

COUNSEL: *Barton*, K.C., and *L. Stone*; *Pritt*, K.C., and *Gahan*; *C. F. H. Carson*, K.C.; *J. W. Estey*, K.C., and *F. W. Wallace*; *Romer*, K.C., and *L. Stone*; *F. W. Wallace*.

SOLICITORS: *Blake & Redden*; *Charles Russell & Co.*; *Lawrence Jones & Co.*

[Reported by Miss B. A. BICKNELL, Barrister-at-Law.]

HOUSE OF LORDS.

Latilla *v.* Commissioners of Inland Revenue.

Viscount Simon, L.C., Lord Atkin, Lord Thankerton, Lord Russell of Killowen and Lord Porter. 11th February, 1943.

Revenue—Income tax—Transfer of assets to foreign company—Income "payable" to foreign company—"Power to enjoy" income of company in transferors—Liability to British income tax—Finance Act, 1936 (26 *Geo.* 5 & *Edw.* 8, *c.* 34), *s.* 18 (1).

Appeal from a decision of the Court of Appeal [1942] 1 K.B. 299, affirming a decision of Lawrence, J. [1940] 2 K.B. 162.

A mine in Rhodesia was owned as to one-third by M. who lived in Rhodesia, and as to the remaining two-thirds by four ladies resident in England, of whom the appellant's wife was one. The mine was worked by them in partnership. By an agreement dated the 20th March, 1933, the four ladies sold as from 1st April, 1932, their shares in the mine and partnership business to L, Ltd., a limited company incorporated in Rhodesia, in consideration of £260,000 satisfied by the issue of 10,000 £1 shares and of 250,000 debentures of £1 each. The debentures carried no interest. The appellant's wife was entitled to one-sixth of the consideration. L, Ltd., carried on the business in partnership with M and received two-thirds of the profits. The company never declared a dividend, but applied its profits in redeeming the debentures. Until the Finance Act, 1936, came into operation, the appellant's wife was able to obtain a share of the profits of the partnership business without incurring for herself or her husband any liability to British income tax. The Crown claimed that income tax was now payable in respect of the sums distributed by the company under the Finance Act, 1936, s. 18. The appellant contended he was not within the section. Lawrence, J., who was affirmed by the Court of Appeal, gave judgment for the Crown. The Finance Act, 1936, s. 18: "For the purpose of preventing the avoiding by individuals ordinarily resident in the United Kingdom of liability to income tax by means of transfers of assets by virtue or in consequence whereof, either alone or in conjunction with associated operations, income becomes payable to persons resident or domiciled out of the United Kingdom, it is hereby enacted as follows: (1) Where such an

individual has by means of any such transfer, either alone or in conjunction with associated operations, acquired any rights by virtue of which he has, . . . power to enjoy . . . any income of a person resident or domiciled out of the United Kingdom, which, if it were income of that individual received by him in the United Kingdom, would be chargeable to income tax by deduction or otherwise, that income shall . . . be deemed to be income of that individual for all the purposes of the Income Tax Acts."

VISCOUNT SIMON, L.C., said that the appellant contended that trade profits made by a partnership could not be said to be income, a share of which "becomes payable" to one of the partners, as one partner was not a creditor of the partnership. The answer to that was to be found in a passage of the judgment of Lord Greene, M.R., where he said: "The share of the profits of the partnership to which the company is entitled is that share which comes to it in accordance with the terms of the partnership. The company is entitled to call upon its partner to do whatever may be necessary, for example, by signing a cheque on the banking account of the partnership, to enable the company to obtain its share. In the partnership accounts the company's undrawn share of profits would appear as a debt owing to the company. If the profits were under the control of the other partner, the company could by appropriate proceedings compel him to pay over its share. If this is not income 'payable' to the company, we do not know what it is. With regard to the argument that it was not the transfer of assets which produced the income, but the activities of the partners, we agree with the argument submitted by the Attorney-General that those activities are 'associated operations.'" These words justified the conclusion that the appellant's attempt to avoid British income and sur-tax by these artificial arrangements had been frustrated.

The other noble and learned lords agreed in dismissing the appeal.

COUNSEL: *Millard Tucker*, K.C., and *Terence Donovan*; *The Attorney-General* (Sir Donald Somervell), *R. P. Hills* and *J. H. Stamp*.

SOLICITORS: *Birkbeck, Julius Edwards & Co.*; *Solicitor of the Inland Revenue*.

[Reported by Miss B. A. BICKNELL, Barrister-at-Law.]

COURT OF APPEAL.

In re A. Singer & Co. (Hat Manufacturers), Ltd.

Lord Greene, M.R., MacKinnon and Luxmoore, L.JJ. 25th January, 1943.

Company—Winding up—Practice—Fraudulent preference—Rights against sureties—Joinder of sureties—Whether third party procedure available.

Appeal from a decision of Simonds, J.

A summons was issued by the liquidator of S., Ltd., a company in compulsory liquidation, to which L. Bank were sole respondents, asking for a declaration that a payment of £1,969 12s. 9d., made by the company to this bank by way of reduction of the company's overdraft, was an undue and fraudulent preference of the bank and/or of A. S. and S. S., guarantors and sureties for the company, over the other creditors of the company under s. 265 of the Companies Act, 1929. The bank by this application asked for leave under R.S.C., Ord. XVIA, to issue a third party notice and to serve it on A.S. and S.S. or alternatively, that they might be added as respondents to the summons. The bank appealed from the order of Simonds, J., who affirmed the registrar in making no order on the application.

LORD GREENE, M.R., said that it was suggested that the liquidator should be ordered to discontinue his summary proceedings by summons in the winding-up and to institute proceedings by writ against the bank, when the bank could bring in the guarantors by third party notice. Simonds, J., declined to exercise his discretion in that matter. He was manifestly right. It was not the duty of the court to direct perfectly adequate and sufficient proceedings in winding-up to be discontinued in order that different proceedings might be started, which would enable an interesting question to be litigated. The second suggestion was that the liquidator should be ordered to add the two sureties as parties. The authorities were not conclusive as to whether in such a case a liquidator could obtain direct relief against a surety (*In re G. Stanley & Co., Ltd.* [1925] Ch. 148; *In re Lyons, ex parte Barclays Bank, Ltd.* v. *The Trustee*, 153 L.T. 201). If the court acceded to this suggestion, it would be merely directing the liquidator to bring before the court persons in whom he was not interested, because he had a solvent respondent, in order to enable an irrelevant question of law to be decided for the comfort of the bank. The bank also asked for leave to serve third party notices on the sureties. Simonds, J., held that third party notices were not applicable to such a case (*In re Land Securities* (1895), Mans. 127). The only jurisdiction which could be exercised in winding-up under the Companies Act, 1929, and the Winding-up Rules was in relation to the winding-up of companies. When this jurisdiction was examined, it was impossible to find any jurisdiction to apply the third party procedure, and so take into consideration disputes which had nothing to do with the winding-up. The appeal must be dismissed.

MACKINNON and LUXMOORE, L.JJ., agreed.

COUNSEL: *A. J. Belsham* and *B. Mark Goodman*.

SOLICITORS: *Stafford Clark & Co*; *Peachey & Co.*

[Reported by Miss B. A. BICKNELL, Barrister-at-Law.]

In re Tharp; Longrigg *v.* People's Dispensary for Sick Animals of the Poor, Inc.

Lord Greene, M.R., MacKinnon and Luxmoore, L.JJ. 4th February, 1943.

Will—Construction—Bequest to specific charity which ceased to exist before death of testatrix—Bequest to non-existent charity—Lapse.

Appeal from a decision of Bennett, J. (86 SOL. J. 302).

This was an appeal by the defendants from so much of the decision of Bennett, J., in which he held the gift to "The Tangier Society for the Prevention of Cruelty to Animals" failed. There was no appeal from the rest of the decision. The Court of Appeal reversed the decision on this one point on construction and on a review of the facts.

COUNSEL: *Harold Lightman* (for *R. W. Goff*, on war service); *G. D. Johnston*; *The Solicitor-General* (Sir David Maxwell Fyfe, K.C.), and *H. O. Danckwerts*; *P. L. Bushe-Fox* (for *B. F. Mendel*, on war service).

SOLICITORS: *Preston, Lane-Claypon & O'Kelly*, for *Longrigg & Pye-Smith*, Bath; *Moon, Gilks & Moon*; *Morrish, Strode & Searle*; *Treasury Solicitor*; *Amery-Parkes & Co.*

[Reported by Miss B. A. BICKNELL, Barrister-at-Law.]

CHANCERY DIVISION.

In re White's Mortgage.

Uthwatt, J. 23rd February, 1943.

Emergency legislation—Mortgage—Receiver dies who was appointed before war—Appointment of new receiver—Whether leave necessary—Law of Property Act, 1925 (15 *Geo.* 5, *c.* 20), *s* 109 (5)—*Courts (Emergency Powers) Act*, 1939 (2 & 3 *Geo.* 6, *c.* 67), *s.* 1 (2) (*a*) (ii).

Adjourned summons.

The applicants, the transferees of a mortgage dated the 10th September, 1920, by this summons under the Courts (Emergency Powers) Act, 1925, asked that they might be at liberty to exercise the remedy which was available to them by way of appointment of a receiver of the property comprised in the mortgage. That Act provides, by s. 1 (2) that: "Subject to the provisions of this section, a person shall not be entitled, except with the leave of the appropriate court: (*a*) to proceed to exercise any remedy which is available to him by way of . . .; (ii) . . . the appointment of a receiver of any property." The applicant contended that in fact the leave of the court was not necessary in the circumstances of this case. The original receiver had been appointed in August 1939. He had died on the 16th June, 1941, and the applicants now wished to appoint a new receiver in his place under the power conferred by s. 109 (5) of the Law of Property Act, 1925.

UTHWATT, J., said that it was accepted practice that where a receiver died the mortgagee could appoint a new receiver under subs. (5) of s. 109 of the Act of 1925. The question was whether an appointment of a receiver, the necessity for which arose by reason of the death of the receiver appointed before the Act, was the "exercise of any remedy" which was available by way of "the appointment of a receiver" under subs. (2) of s. 1 of the Act of 1939. In his opinion ordinarily it was not. The determination to appoint a receiver was made when the original receiver was appointed. The circumstance to be taken into account by reason of the death of an original receiver was not whether events had happened which justified the appointment of a new receiver, but whether the *status quo* should be maintained. All that a mortgagee was doing by making a new appointment was to use the machinery necessary to keep going the remedy which he had already exercised. Where it was merely a matter of replacing one receiver by another, in the sense of keeping the office continuous, there was no need to obtain the leave of the court before appointing a new person receiver. But where by reason of the interval of time being so great, between the lapse of the appointment of one receiver and the appointment of a new receiver, that in substance the matter was really a new transaction, leave was necessary. In this case, more than a year elapsed between the death of the original receiver and steps being taken to continue the receivership. The proper inference to be drawn from those facts was that a new transaction was being entered upon and not a continuance of the old one. Accordingly the leave of the court was necessary.

COUNSEL: *J. A. Wolfe*.

SOLICITOR: *Harold E. Blaiberg*.

[Reported by Miss B. A. BICKNELL, Barrister-at-Law.]

In re Bennett; Midland Bank Executor and Trustee Co., Ltd. *v.* Fletcher.

Uthwatt, J. 26th February, 1943.

Administration—Leaseholds—Right of personal representatives to retain indemnity fund after assent.

Adjourned summons.

The testatrix, by her will dated the 9th May, 1936, and two codicils thereto, after appointing the plaintiffs to be executors and trustees thereof and giving a great number of pecuniary legacies and specific bequests, made nine specific bequests in respect of nine small leasehold properties, of which she was the assignee. She gave her residuary estate to her trustees upon trust for sale and conversion and to divide the net proceeds between twelve legatees. The testatrix died on the 25th July, 1939. Shortly after her death the plaintiffs, as her personal representatives, entered into possession of the leasehold premises. In 1940 and 1941, for the most part, before *In re Owers* [1941] Ch. 389, 85 SOL. J. 341, had been decided, the plaintiffs, as executors, executed assents in writing vesting all the leaseholds except one in the specific legatees. The residuary estate was insufficient to pay the pecuniary legacies in full. By this summons the plaintiffs asked, first, whether they ought to set aside a fund for their indemnity in respect of any liability of theirs under the lessee's covenants and, if so, that an inquiry might be directed as to the amount of such fund. The defendant to the summons was both a pecuniary and residuary legatee. It was contended on her behalf that, notwithstanding the decision in *In re Owers*, the plaintiffs were not entitled to any indemnity in respect of the leaseholds as to which they had already executed assents. This contention was based on the decisions in *Shadbolt* v. *Woodfall*, 2 Collyer 30; *Hickling* v. *Boyer*, 3 Mac. & G. 35; and *Smith* v. *Smith*, 1 Dr. & Sm. 384.

UTHWATT, J., declared, in answer to question 1, that in respect only of the property in respect of which no assent had as yet been made a fund

ought to be set aside by the plaintiffs out of the estate of the testatrix and retained for their indemnity against any liability of theirs under the lessee's covenants relating to that property, and he directed an inquiry to ascertain the amount of such fund.

COUNSEL: *Maddocks; Hillaby.*

SOLICITORS: *Billinghurst, Wood & Pope.*

[Reported by Miss B. A. BICKNELL, Barrister-at-Law.]

KING'S BENCH DIVISION.

Yorkshire (North Riding) County Valuation Committee *v.* Redcar Corporation.

Viscount Caldecote, L.C.J., and Tucker and Cassels, JJ.
5th November, 1942.

Rating—Beneficial occupation—Foreshore occupied by borough corporation—Charges for admission to various amenities—Access of public to part without charge—Whether the corporation was rateable.

Appeal by way of case stated from the Yorkshire (North Riding) Quarter Sessions.

Between 1923 and 1933 the Borough of Redcar purchased foreshore and land in the borough totalling 382 acres, acting under their powers in the Public Health Act, 1875, s. 164, and they erected thereon a swimming pool, a concert hall and other buildings under their powers in Pt. IV of the Public Health Acts (Amendment) Act, 1907. The corporation charged an admission fee of 6d. to the swimming bath and to the bathing pool and there were charges for the use of boats on the lake. For 1937–38 the revenue from these three hereditaments was £34,415. The rateable value of the swimming bath was £237, of the open-air bathing pool £100, and of the boating lake £122. The concert pavilion provided an income in 1937–38 of £2,881, in which might be included the rent of two lock-up shops attached to the pavilion, with entrances from the promenade and from the pavilion—£105 and £85. The rateable value of the pavilion was £138 and of the two shops £20 each. The corporation let out sites for swings, roundabouts, kiosks, donkeys, and also let out deck chairs and bathing tents on the foreshore. There were also three putting courses where charges were made for play, but the public had access even during play. The public had access to the foreshore generally. In 1937–38 the corporation's income from the foreshore was more than £2,000 and it was rated at £347. Restrictive covenants in the conveyance of the foreshore provided that the land was to be used for the public benefit only, subject to regulations and supervision to ensure orderly use, and that it was to be preserved as an open space in perpetuity, and was not to be used otherwise than for a public recreation ground and for sea bathing. In the conveyances of the land surrounding the swimming pool, swimming bath, boating lake and pavilion it was provided that the corporation were not to erect between a neighbouring convalescent home and the sea any erection or building, and were to give the public access to walk, fish, bathe and gather seaweed and not to erect a building without the consent of the Board of Trade. Before 30th March, 1938, the properties appeared in the valuation list as seven separate hereditaments and were separately assessed for rating purposes. On that date, however, the corporation made a proposal that the hereditaments should be omitted from the valuation list on the ground that the corporation were not in occupation of them for rating purposes. The county valuation committee appealed to quarter sessions.

VISCOUNT CALDECOTE, L.C.J., said that all the decisions proceeded from the rule of rating law derived from the Statute of Elizabeth (43 Eliz. c. 2) that rateability depended on occupation. His lordship referred to the judgment of Lush, J., in *R.* v. *St. Pancras Assessment Committee*, 2 Q.B.D. 581, at p. 588, of Buckley, L.J., in *Liverpool Corporation* v. *Chorley Union Assessment Committee* [1912] 1 K.B. 270, at p. 287, of Lord Westbury in *Mersey Docks* v. *Cameron*, 11 H.L.C. 443, 501, of Brett, M.R., and Bowen, L.J., in *West Bromwich School Board* v. *West Bromwich Overseers*, 13 Q.B.D. 929, 941, 943, of Bramwell, L.J., in *Hare* v. *Putney Churchwardens and Overseer*, 7 Q.B.D. 223, 231, and of Brett, L.J., in the same case at p. 234, of Lord Halsbury, L.C., and of Lord Herschell in *Lambeth Overseers* v. *London County Council* (the *Brockwell Park* case) [1897] A.C. 625, 630, 632, and to *Liverpool Corporation* v. *West Derby Assessment Committee* [1908] 2 K.B. 647. His lordship, after examining these decisions, added that it might safely be assumed that the public used the foreshore in the same manner before and after the acquisition. The total income after deducting unemployment grants was £11,512 18s. 9d., and the total expenditure after deducting sums for redemption and interest and expenditure of a capital nature was £11,034 14s. 2d., a very different state of things from that which existed in the *Liverpool* case, where the average annual revenue from the park for the past five years amounted to £62 10s. and the average annual cost of maintaining the park during the same period was £3,525. In the present case it was not difficult to imagine a very substantial rent being paid either by the corporation or by some amusement contractor for the privilege of being able to earn the very large revenue which the corporation had in the past received. The hereditaments, taken as a whole, were not used so as to allow the public the free and unrestricted use of them, but the use was very largely dependent on the payment of sums for admission to or for the use of the works and the buildings. The corporation used the foreshore to provide amenities for the public, but also to make a revenue towards the expense they had incurred. Applying the test laid down by Brett, L.J., in *Hare* v. *Putney Churchwardens and Overseer*, *supra*, that there is no beneficial occupation if by law no benefit could possibly arise to the occupier, the corporation failed, were in rateable occupation of all the seven hereditaments, and all the assessments would be restored to the valuation list.

TUCKER and CASSELS, JJ., delivered judgments concurring with his lordship's judgment.

COUNSEL: *S. G. Turner*, K.C., and *Harold Williams; Erskine Simes* and *A. E. Baucher.*

SOLICITORS: *Sharpe, Pritchard & Co.*, for *H. G. Thornley*, Northallerton; *Lewin, Gregory, Torr, Durnford & Co.*, for *H. Caldwell*, Redcar.

[Reported by MAURICE SHARE, Esq., Barrister-at-Law.]

COURT OF CRIMINAL APPEAL.

Hodgson *v.* Lakeman.

Viscount Caldecote, L.C.J., and Tucker and Cassels, JJ. 14th October.

Criminal procedure—Appeal by case stated—Death of appellant before appeal heard—Leave to counsel for appellant's executors to argue the appeal.

Case stated by the justices sitting at Carlisle.

H, the clerk of the Cumberland County Council, had been convicted of a breach of the Lighting (Restrictions) Order, 1940, "as their chief clerk and officer," the offence being alleged to have been committed at the council's offices. The council were not charged. The parties on the application of H stated a case for the opinion of the Divisional Court, but H died before his appeal could be heard. When the facts occurred which gave rise to the alleged offence, H was some miles away from the place where they were alleged to have occurred. H was fined 35s. In the course of the argument it was pointed out that the practice with regard to the argument of an appeal in such a case did not appear to be uniform (Short and Mellor's Crown Office Practice, 2nd ed., p. 425), and that in *R.* v. *Roberts* (1732), 2 Str. 937, a conviction was affirmed after a defendant's death Viscount Caldecote, L.C.J., referred to *Roe* v. *Chatworthy* (23rd May, 1940, unreported), where, after argument, the court decided to hear an appeal in similar circumstances. On behalf of the respondent it was stated that the court could not hear argument for a dead person, but it had inherent jurisdiction, if satisfied by the executors that they had an interest in the appeal, to allow them to proceed with it (*Siberry* v. *Conolly*, Short and Mellor's Crown Practice, 2nd ed., p. 425).

Viscount CALDECOTE, L.C.J., said that as the executors of the deceased claimed an interest in the appeal, and the respondent did not dispute that claim, he gave leave to counsel to argue the appeal on behalf of the executors, and the conviction would be quashed.

TUCKER and CASSELS, JJ., concurred.

COUNSEL: *G. O. Slade; Valentine Holmes.*

SOLICITORS: *Harding & Munby; Charles Russell & Co.*, agents for *Thompson, Mawson & Harston*, of Carlisle.

[Reported by MAURICE SHARE, Esq., Barrister-at-Law.]

R. *v.* Featherstone.

Viscount Caldecote, L.C.J., Tucker and Cassels, JJ. 2nd November, 1942.

Criminal law—Inadvertent admission of evidence of bad character of accused—Accused not informed of right to apply for fresh trial—Accused undefended by counsel—Irregularity—No miscarriage substantial of justice—Criminal Appeal Act, 1907 (7 *Edw.* 7, *c.* 23), *s.* 4.

Appeal against conviction and sentence recorded at the County of London Sessions on 23rd July, 1942.

The appellant was charged with stealing clothing and with receiving stolen clothing and was not represented by counsel. He was charged with his wife, his mother-in-law, and a Mrs. Standing. On his mother-in-law giving evidence for Mrs. Standing, she was asked in cross-examination by counsel for the prosecution whether she knew what the appellant was, and she replied that she had been told that he had once been in prison. The object of the question had not been to elicit any answer of this sort, but only to ascertain whether he was a dealer in old clothes, this being a relevant factor in the case. The deputy-chairman told the jury to dismiss from their minds the answer about the appellant having been in prison. The appellant was convicted on two charges of receiving and sentenced to five years' penal servitude.

VISCOUNT CALDECOTE, L.C.J., delivering the judgment of the court, said that not only was the answer one which should not have been given, but the irregularity was one which ought to have been taken notice of in some way beyond the mere direction to the jury, which was quite proper in itself, but inadequate. In similar previous cases the prisoners were defended, and in one of them, *R.* v. *Firth* (1938), 26 Cr. App. Rep. 148, it was held that it was the duty of the court to begin the trial afresh before a new jury. Lord Hewart, L.C.J., said that it was in the highest degree dangerous to permit the trial to continue to its end where such an irregularity had occurred as that which here had been inadvertently permitted. In cases where a prisoner was not defended and an irregularity of this character took place, it was the duty of the court to inform the prisoner that he had an opportunity and a right to submit that the trial should not proceed and that he should make the application then and there if he wished to do so. If such an application was then made, it was the duty of the judge to decide on the application according to the circumstances. There was, therefore, a manifest irregularity. In the present case, however, the appellant had made a statement on committal which amounted almost to an admission of guilt, and when addressing the deputy chairman in mitigation of sentence he said that he was very sorry to have got his wife and innocent friends into trouble and was glad to think that they had been cleared. In addition, a large amount of stolen clothing had been found in his room, and there was the improbable story which he told to the effect that some soldiers, unknown to him by name, had visited his room in the early hours of the morning and had asked him to look after the property. It was therefore impossible for anyone after hearing that evidence to arrive at any other conclusion than that the appellant was guilty of the offences charged. In those circumstances no substantial

miscarriage of justice had occurred, and, therefore, in accordance with their power under the proviso to s. 4 of the Criminal Appeal Act, 1907, the conviction would not be quashed. There were also no grounds for interfering with the sentence. The appeal would be dismissed.

COUNSEL: *H. D. Baskerville; H. Fenton.*

SOLICITORS: *The Registrar of the Court of Criminal Appeal; The Solicitor for the Metropolitan Police.*

[Reported by MAURICE SHARE, Esq., Barrister-at-Law.]

Parliamentary News.

ROYAL ASSENT.

The following Bills received the Royal Assent on the 11th March :—

Clydebank and District Water Order Confirmation.
House of Commons Disqualification (Temporary Provisions).
Police (Appeals).
Universities and Colleges (Trusts).

HOUSE OF LORDS.

Agriculture (Miscellaneous Provisions) Bill [H.C.].
Read Second Time.
Evidence and Powers of Attorney Bill [H.L.].
War Damage (Amendment) Bill [H.C.].
In Committee. [16th March.
Settled Land and Trustee Acts (Court's General Powers) Bill [H.L.].
Read First Time. [11th March.

HOUSE OF COMMONS.

Housing (Agricultural Population) (Scotland) Bill [H.C.].
Read Second Time. [11th March.
Liverpool Hydraulic Power Bill [H.L.].
Read First Time. [10th March.

War Legislation.

STATUTORY RULES AND ORDERS, 1942 AND 1943.

E.P. 309. **Apparel and Textiles** (Bedding). Direction, March 2, *re* Information and Returns.
E.P. 330. Apparel and Textiles, Footwear (Manufacture and Supply) (No. 8) Directions, March 5.
E.P. 325. **Control of Paper** (No. 57) Order, March 3.
E.P. 331. Control of Paper (No. 58) Order, March 5.
E.P. 345. **Food** (Local Distribution) Order, 1943. General Licence, March 6.
E.P. 344. Food (Points Rationing) Order, 1943. General Licence, March 6.
E.P. 321. **Hire Purchase and Credit Sale Agreements** (Control) Order, March 9.
E.P. 316. **Lighting** (Restrictions) (Amendment) Order, Feb. 26.
No. 311. **National Health Insurance** (Subsidiary Employments) Order, July 28, 1942.
No. 293. **Post Office Savings Bank** Amendment (No. 3) Regulations, Feb. 22.
No. 355/S.7. **Probation of Offenders, Scotland.** Probation (Scotland) Rules, Feb. 22.
E.P. 332. **Regional Commissioners** (Power of Detention) Order, March 1.
E.P. 333. Regional Commissioners (Restriction of Movement) Order, March 1.
No. 285. **Trading with the Enemy** (Specified Persons) (Amendment) (No. 4) Order, March 3.

STATIONERY OFFICE.

List of Statutory Rules and Orders. Feb. 1–28, 1943. 2d. (3d.)

Notes and News.

Honours and Appointments.

Mr. GERALD HOWARD, barrister-at-law, has been appointed Recorder of Bury St. Edmunds, in succession to Sir Reginald Neville, who has retired after thirty-six years' service. Mr. Howard was called by Lincoln's Inn in 1924.

Notes.

During January a detention order under Regulation 18B was made against one person, a British subject not of enemy origin. This is stated in a report made by the Home Secretary. In the same period eight persons were released. There were no cases in which a decision was taken not to follow the advice of an advisory committee.

The Inland Revenue announce that two important changes will be made on 1st May, 1943, in the tax deduction scheme for both salaried employees and weekly wage earners. If an assessment is adjusted, and the amount of tax already deducted exceeds the corrected amount due for the whole deduction period, the employer will at once refund the excess to the taxpayer. It will no longer be necessary for the taxpayer to claim repayment from the Revenue, unless in exceptional circumstances the refund cannot be made by the employer. The other change affects salaried employees and weekly wage earners, except weekly wage earners in the building and civil engineering industries, to whom the special arrangements already made will still apply. It provides that on leaving his employment the taxpayer will be given by his employer a form showing the amount of his normal weekly or monthly tax deduction. On taking up new employment he gives this form to his new employer, who will continue the deductions shown until otherwise instructed. Hitherto delay in making tax deductions owing to change of employment has occasionally caused hardship, and the new arrangement, together with the existing deduction limits, should obviate this.

At York Assizes, Mr. Justice Croom-Johnson complained about the waste of paper at trials caused by preparing unnecessary documents, plans and photographs. He said that in a case he tried recently 150 copies of photographs were completely wasted, as neither he nor the jury could find in them anything of value to the case. It is recognised that many members of the legal profession have made great efforts to economise in the use of paper, by reducing the size of margins, and by other measures, but as Mr. Justice Croom-Johnson is not the first judge to make a plea for less paper wastage, it seems evident that there is still much room for improvement. The country is now faced with the problem of finding more and more paper to meet urgent war needs out of ever-dwindling stocks, and this can only be done if the most stringent economy is practised in the use of paper. Just as pressing is the need to turn out the accumulated stocks of used paper to make up for the diminishing amount which can be salvaged from that in current use. Here members of the legal profession can be of tremendous assistance. As large users of good quality paper of all types, they can help to make good the present acute shortage of better grades of paper. Such paper is needed for re-pulping to provide maps, charts and blue prints for Service and scientific requirements and for many other purposes connected with our war effort. It is felt that solicitors' offices alone could provide hundreds of tons of used paper, without the sacrifice of any documents which might be needed in the future.

HIRE-PURCHASE CONTROL.

The Hire-Purchase (Control) Order has now been revoked and replaced by the Hire-Purchase and Credit Sale Agreements (Control) Order (S.R. & O., 1943, No. 321), which comes into force on 22nd March. The new order is of a more comprehensive character than the one which has been revoked, and covers both hire purchase and credit sale agreements, which are treated under it in exactly the same fashion.

The effect of the new order is to prohibit a sale, at a price over and above the retail cash price, of all price controlled goods, new or second-hand, sold through hire purchase or credit sale agreements, except in the case of certain articles which are set out in the schedule to the order.

These exceptions are—

(1) Articles covered by an order under s. 2 of the Goods and Services (Price Control) Act in which hire purchase and credit sale agreement charges are specifically controlled. Orders controlling hire-purchase charges are already in force both for utility and non-utility furniture and for prams; the necessary amendments to control charges when these articles are sold by credit sale agreements will be published in the next few days and come into force on 22nd March, the same date as the new Hire-Purchase Order.

(2) A number of articles in respect of which an order under s. 2 of the Goods and Services (Price Control) Order has not yet been made but will be made as soon as possible after 22nd March. These articles are, therefore, for the time being specifically exempted from the operation of the new order. They are—

Motor cycles and motor cycle combinations;
Pedal cycles, carrier cycles and tricycles;
Sewing machines;
Carpets, rugs, mats, linoleum and other floor coverings;
Wireless receiving sets of the domestic or portable type;
Deaf aids;
Domestic heating, cooking and cleaning appliances.

Hire-purchase and credit sale agreement charges will also be permitted in the sale of second-hand goods of the description listed above. Such charges will be controlled in a new Second-hand Goods Order.

The Hire-Purchase Order also allows in certain circumstances and on certain conditions the making of a new hire purchase or credit sale agreement with charges in the case of goods which have been covered by an earlier agreement.

Court Papers.

COURT OF APPEAL AND HIGH COURT OF JUSTICE—CHANCERY DIVISION.

HILARY SITTINGS, 1943.

ROTA OF REGISTRARS IN ATTENDANCE ON

DATE.		EMERGENCY ROTA.	APPEAL COURT I.	Mr. Justice FARWELL
Monday,	Mar. 22	Mr. Blaker	Mr. Jones	Mr. Hay
Tuesday,	,, 23	Andrews	Hay	Reader
Wednesday,	,, 24	Jones	Reader	Blaker
Thursday,	,, 25	Hay	Blaker	Andrews
Friday,	,, 26	Reader	Andrews	Jones
Saturday,	,, 27	Blaker	Jones	Hay

DATE		GROUP A. Mr. Justice BENNETT *Non-Witness*	Mr. Justice SIMONDS *Witness*	GROUP B. Mr. Justice MORTON *Witness*	Mr. Justice UTHWATT *Non-Witness*
Monday,	Mar. 22	Mr. Andrews	Mr. Jones	Mr. Blaker	Mr. Reader
Tuesday,	,, 23	Jones	Hay	Andrews	Blaker
Wednesday,	,, 24	Hay	Reader	Jones	Andrews
Thursday,	,, 25	Reader	Blaker	Hay	Jones
Friday,	,, 26	Blaker	Andrews	Reader	Hay
Saturday	,, 27	Andrews	Jones	Blaker	Reader